



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0371]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the West 79th Street Bridge across the Atlantic Intracoastal Waterway (AICW), mile 1084.6, at Miami, Florida, and the East 79th Street Bridge across Miami Beach Channel, mile 2.20, at Miami Beach, Florida. This action will place the West and East 79th Street Bridges on a once an hour opening schedule during peak traffic hours, Monday through Friday, except Federal holidays. This action is intended to assist with reducing vehicular traffic congestion in the area.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2022-0371) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FDOT	Florida Department of Transportation
FL	Florida
AICW	Atlantic Intracoastal Waterway

II. Background Information and Regulatory History

On June 7, 2022, the Coast Guard published a Notice of Proposed Rulemaking entitled, “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL” in the **Federal Register** (87 FR 34601). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended July 22, 2022, we received one hundred twenty-six comments, and those comments are addressed in Section IV of this Final Rule.

On September 20, 2022, the Coast Guard published a Test Deviation entitled “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL” in the **Federal Register** (87 FR 59298). There we stated why we issued the Test Deviation and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended December 29, 2022, we received two hundred two comments, and those comments are addressed in Section IV of this Final Rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The West 79th Street Bridge across the AICW, mile 1084.6, at Miami, FL is a double-leaf bascule bridge with a 21-foot vertical clearance (25 feet charted at the center span) at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.261 (mm-1). The East 79th Street Bridge across the Miami Beach Channel, mile 2.20, at Miami Beach, FL is a double-leaf bascule bridge with a 21-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.304. Navigation on the waterways consists of recreational and commercial mariners.

North Bay Village, with the support of the bridge owner, Florida Department of Transportation, requested the Coast Guard consider allowing the drawbridges to remain closed to navigation during morning and evening rush hour with top of the hour openings provided at pre-determined times. North Bay Village requested this change to assist with alleviating vehicle traffic congestion in the area.

IV. Discussion of Comments, Changes and the Final Rule

During the NPRM comment period, 126 were received. One hundred fifteen comments were in support of the proposed change. Comments in general supported the change with multiple comments asking for further restrictions. Comments to further restrict navigation included not opening during daylight hours and opening once an hour. The Coast Guard feels additional operating restrictions on these waterways would create an unreasonable obstruction across navigable waters of the United States which is contrary to federal law. Eight comments had no opinion on the proposed change but provided general comments on the operation of the bridges. Comments were made that the bridges are not being properly maintained and have frequent failures. These comments were outside the scope of the NPRM, and the comments were made available to the bridge owner. Three comments opposed the proposed change. The comments stated the bridge should not open hourly because it is during rush hour. These

commenters misunderstood the bridge operation, however, because this action will reduce the drawbridge openings by only allowing the bridge to open hourly verses the current schedule of twice an hour.

During the Test Deviation comment period, 202 comments were received. One hundred seventy-eight comments were in support of the test deviation and proposed changes. Like the NPRM comments, most appeared to be part of a mass mailing campaign by residents and North Bay Village employees and included identical or very similar comments. One North Bay Village employee stated the bridges should be permanently closed to navigation and nine others wanted additional restrictions which included not opening during rush hour. Comments to permanently close or allow the drawbridge not to open during rush hour would create an unreasonable obstruction across navigable waters of the United States and is contrary to federal law. Seven comments had no opinion on the proposed change but mentioned the bridge failures, and that a new bridge should be considered. These comments were outside the scope of the test deviation and the comments were made available to the bridge owner. Eight comments were duplicate entries.

We did not make changes to the regulatory text as a result of these comments. We did, however, make a change to the numbering scheme within 117.261.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant

regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that vessels can still transit the bridges at designated times throughout the day, and vessels that can transit under the bridges without an opening may do so at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3

2. Amend §117.261 by redesignating paragraph (nn) as paragraph (oo) and adding new paragraph (nn) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

(nn) West 79th Street Bridge, mile 1084.6, at Miami, Florida. The draw shall operate as follows:

(1) Monday through Friday (except on Federal holidays):

(i) 7 a.m. to 10 a.m. the draw need only open on the hour.

(ii) 10 a.m. to 4 p.m. the draw need only open on the hour and half hour.

(iii) 4 p.m. to 7 p.m. the draw need only open on the hour.

(iv) 7 p.m. to 7 a.m. the draw shall open on signal.

(2) Saturday, Sunday, and Federal holidays the draw shall open on signal.

3. Revise §117.304 to read as follows

§ 117.304 Miami Beach Channel

The draw of the East 79th Street Bridge, mile 2.20, at Miami Beach, Florida. The draw shall operate as follows:

(a) Monday through Friday (except on Federal holidays):

(1) 7 a.m. to 10 a.m. the draw need only open on the hour.

(2) 10 a.m. to 4 p.m. the draw need only open on the hour and half hour.

(3) 4 p.m. to 7 p.m. the draw need only open on the hour.

(4) 7 p.m. to 7 a.m. the draw shall open on signal.

(b) Saturday, Sunday, and Federal holidays the draw shall open on signal.

Dated: May 4, 2023

Brendan C. McPherson
Rear Admiral, U. S. Coast Guard
Commander Coast Guard Seventh District

